

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HERMÈS INTERNATIONAL and)
HERMÈS OF PARIS INC.,)
)
Plaintiffs,)
)
vs.) No.
) 1:22-CV-00384-JSR
MASON ROTHSCHILD,)
)
Defendant.)
-----)

September 23, 2022
9:32 a.m.

Deposition of BLAKE GOPNIK, held at the
offices of Baker & Hostetler LLP, 45
Rockefeller Plaza, New York, New York,
pursuant to subpoena, before Laurie A.
Collins, a Registered Professional Reporter
and Notary Public of the State of New York.

A P P E A R A N C E S (NOTE ZOOM PARTICIPANTS) :

BAKER & HOSTETLER LLP

Attorneys for Plaintiffs

45 Rockefeller Plaza

New York, New York 10111

BY: GERALD J. FERGUSON, ESQ.

gferguson@bakerlaw.com

FRANCESCA ROGO, ESQ.

frogo@bakerlaw.com

LEX LUMINA PLLC

Attorneys for Defendant

745 Fifth Avenue, Suite 500

New York, New York 10151

BY: CHRISTOPHER J. SPRIGMAN, ESQ.

chris@lex-lumina.com

RHETT O. MILLSAPS, II, ESQ.

(via videoconference)

rhett@lex-lumina.com

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2 version are sleek objects, not objects -- I
3 believe that I've seen versions of the fur-covered
4 purses that, for instance, have camouflage on them
5 that are brightly colored that are my -- almost 12:14:04
6 anyone's estimation tacky. I think Hermès tries
7 to avoid tackiness.

8 Q. Would it change your opinion as to the
9 sheer absurdity of fur on Birkins if Hermès has in
10 fact made fur-covered bags? 12:14:31

11 MR. SPRIGMAN: Objection.

12 A. The specifics would be important, the
13 color of the fur, whether it covered the entire
14 bag or not, whether it looked as silly as Mason
15 Rothschild's fur-covered bags look. 12:14:42

16 Q. Let me show you two exhibits we have
17 marked as Exhibit 186 and 187.

18 (Exhibit 186, examples of Birkin bags
19 with fur, marked for identification.)

20 (Exhibit 187, examples of Birkin bags
21 with fur, marked for identification.)

22 A. I was given 26 as well. Did you want
23 me to have 26 as well?

24 Q. Oh, I apologize. No.

25 (Pause.) 12:15:35

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2 Q. In showing you these two exhibits, I
3 represent to you that they've been produced in
4 this litigation by Hermès as examples of Birkin
5 bags with fur on them. 12:15:47

6 Do you have any reason to doubt that
7 these were authentic Birkin bags?

8 MR. SPRIGMAN: I'm going to object.

9 First of all, I don't see any Bates stamps on
10 these documents. Second, I have not yet heard 12:15:57
11 a representation about whether these bags have
12 actually been marketed, that is, sold to the
13 public; and if so, when.

14 So are there answers to those
15 questions? 12:16:09

16 MR. FERGUSON: For the Bates stamps, we
17 can provide them. I think it was a problem in
18 the way these documents were printed. But
19 they were produced with Bates stamps. 186 is
20 Hermès 002396-99, and 187 is Hermès 12:16:25
21 0023400-02.

22 MR. SPRIGMAN: And is there a
23 representation about these bags; in particular
24 whether they ever came out of the laboratory?

25 Q. I am going to ask you to assume for 12:16:51

1 Gopnik

2 this question that these bags have been marketed
3 and sold by Hermès. If their bags have been
4 marketed and sold by Hermès, is it absurd for
5 Birkin bags to have fur on them? 12:17:08

6 A. I'm sorry, I don't understand -- maybe
7 just because I'm not a lawyer -- what you mean by
8 "if." They either were or they weren't, and I'm
9 not clear. The answer is different depending
10 whether they were or weren't. 12:17:21

11 Q. I'm asking you to assume they were.

12 A. To assume --

13 Q. As an expert witness, I can ask you to
14 make assumptions. I can ask for hypothetical
15 questions. 12:17:30

16 MR. SPRIGMAN: I'm going to raise an
17 objection. Is there a time frame for the
18 marketing, since we're asking him to assume
19 something that is a fashion item and that goes
20 in and out of fashion? 12:17:36

21 MR. FERGUSON: You can state your
22 objections. I'm going to ask my question.

23 MR. SPRIGMAN: Okay. Good.

24 A. Why don't you read it to me again, just
25 so I'm very clear on it. 12:17:47

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2 (Record read.)

3 A. It's a complicated question. Yes, I
4 would say it is absurd for Birkin bags to have fur
5 on them. 12:18:31

6 Q. Does the opinion you just expressed
7 reflect a consensus of art critics?

8 MR. SPRIGMAN: Objection.

9 A. There would be no consensus of art
10 critics around fur-covered Birkin bags. My guess 12:18:41
11 is I'm the only art critic who's ever encountered
12 the question of fur-covered Birkin bags.

13 Q. Your statement that fur on a MetaBirkin
14 is a sheer absurdity, does that reflect the
15 consensus of art critics? 12:19:04

16 A. Again, they would be unlikely to have
17 encountered it as an issue in their art criticism.
18 I would imagine that it would -- that many of them
19 would form the same opinion as me. I'm just of
20 course guessing at their opinions. 12:19:19

21 Q. You say that many -- you imagine that
22 many would form the same opinion as you. Do you
23 also imagine that there are those who would not
24 form the same opinion as you?

25 A. There always are art critics who form 12:19:35

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2 (Pause.)

3 Q. Have you seen this document before
4 today?

5 A. I've not, no. 02:31:18

6 Q. Have you seen the shirt depicted in
7 the -- the large shirt depicted on the first page
8 of this document before today?

9 A. I don't believe I ever have, no.
10 When you say "large," is that a 02:31:37
11 normal -- is not a normal shirt?

12 Q. Because there was a small blue shirt in
13 the bottom corner, I was referring to the large
14 white red shirt in the center of the page.

15 A. Got it. 02:31:59

16 Q. Are you aware that Mason Rothschild
17 sold a line of classic collegiate apparel inspired
18 T-shirts for art and fashion students?

19 MR. SPRIGMAN: Objection.

20 A. I'm not aware of that. 02:32:11

21 Q. I'd like you to assume in this question
22 that the Parsons T-shirt shown in this document
23 was created and sold by Mason Rothschild. Is this
24 T-shirt art?

25 MR. SPRIGMAN: Objection. 02:32:57

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2 A. As with anything else, I really would
3 normally like to study it in greater detail. But
4 my guess is that within the larger context of
5 Mason Rothschild, knowing about his MetaBirkins 02:33:08
6 project especially, this would very much seem to
7 indicate -- because he's touching on Central Saint
8 Martins Parsons, this would seem to set it within
9 an art world context. It seems to be an
10 intervention in art world discourse. 02:33:25

11 Q. Are you familiar with the Parsons
12 School of Design?

13 A. I am.

14 Q. Are you familiar with the logo -- let
15 me ask you, what is the Parsons School of Design? 02:33:48

16 A. Parsons School of Design is part of the
17 New School in New York. It's their design
18 component. It's a venerable design school.

19 Q. Are you familiar with the logo of the
20 Parsons School of Design? 02:34:05

21 MR. SPRIGMAN: Objection.

22 A. I'm not.

23 Q. I'm going to show you what we've marked
24 as Exhibit 194.

25 (Exhibit 194, printout from Wayback 02:34:21

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2 Machine internet archive, marked for
3 identification.)

4 Q. I'm going to represent to you that this
5 is a page pulled from the Wayback Machine internet 02:34:41
6 archive showing a page from the Parsons Web site
7 as it appeared around 2015.

8 Does this document refresh your
9 recollection as to what the logo of the Parsons
10 school looks like? 02:35:09

11 MR. SPRIGMAN: Objection. I'm going to
12 object to this. You haven't laid any
13 foundation that this is a logo of the Parsons
14 School of Design or -- there's no context on
15 this Web page. I'm not sure what. 02:35:19

16 THE WITNESS: I am concerned about
17 that.

18 MR. SPRIGMAN: The Web page is not --
19 does not look like a Web page that would
20 appear in nature. It looks like -- 02:35:26

21 MR. FERGUSON: Like a page from the
22 Wayback Machine?

23 MR. SPRIGMAN: I know, but it's missing
24 a lot of context.

25 MR. FERGUSON: I'm going to as you not 02:35:36

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2 to make speaking objections. You've stated
3 your objection.

4 MR. SPRIGMAN: I'm not making a
5 speaking objection. I'm filling in the 02:35:41
6 problem with an exhibit you put in front of
7 the witness, which is something you
8 manufactured and appears to be missing a bunch
9 of context.

10 So that's not a speaking objection so 02:35:48
11 much as an objection against what I consider
12 to be an improper exhibit.

13 Now, if you want to ask him about it,
14 that's fine. But I'm this is beyond the pale,
15 so I will speak my objection. 02:36:00

16 Q. Does this document refresh your
17 recollection of what the logo for the Parsons
18 school looks like?

19 MR. SPRIGMAN: Objection.

20 A. No, I have no knowledge of the logo, 02:36:08
21 what it was or ever had been. Logos change, by
22 the way, very frequently. I wouldn't be surprise
23 if that is no longer the logo and was only briefly
24 the logo.

25 Q. Referring back to Exhibit 6, is it your 02:36:40

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2 testimony that this T-shirt which presents the
3 name Parsons in red on a white T-shirt is art?

4 MR. SPRIGMAN: Objection.

5 A. Again, that's like asking me if a given 02:36:58
6 urinal is art. It's only art within a context.
7 But this has enough markers that indicate to me
8 that it could very well be playing that kind of
9 role.

10 Q. And what are the markers? 02:37:08

11 A. The most important marker is that it's
12 actually engaging with the art world. There's a
13 rich tradition of artists in the last 20 or 30 or
14 40 years seeing art schools as an important
15 subject to talk about and the way they train 02:37:23
16 people and the way they pretend to give people
17 skills to then become professional artists.

18 There's a very large discourse, in
19 which my wife happens to participate, of people --
20 of artists making work about the nature of art 02:37:36
21 schools.

22 Q. Is this item a counterfeit?

23 MR. SPRIGMAN: Objection.

24 A. Again, a counterfeit is only -- you can
25 only tell when something is a counterfeit or not 02:38:03

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within a particular context of use. And it's possible for something to be both an artwork and a counterfeit at the same time.

Q. How is it possible for something to be both an artwork and counterfeit at the same time?

A. Just as Marcel Duchamp's urinal presented in a museum or conceptualized in a museum, conceptualized in an art book, is a work of art. However, if it's presented to someone who desperately needs to urinate, then it can function as a urinal as well. 02:38:27

Artwork often has two separate functions simultaneously.

Q. Would it change your view as to whether the shirt depicted in Exhibit 6 is art if Parsons sent a letter to Mr. Rothschild claiming infringement of their rights and demanding that he stop selling them?

MR. SPRIGMAN: Objection. 02:39:09

A. Not in the slightest.

Q. And why is that?

A. Because -- first of all, the kind of people who send those letters at art schools are usually the legal department, people in charge of

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2 things like branding. They rarely have connection
3 to the people who make art or teach art.

4 It could be that Parsons sending that
5 letter isn't Parsons art school but simply the 02:39:26
6 people at Parsons only responsible for financial
7 matters, for instance.

8 Q. I'm showing you what we've marked as
9 Exhibit 196.

10 (Exhibit 196, depiction re Babe Ruth, 02:40:02
11 marked for identification.)

12 A. I own four of these. Sorry, I
13 shouldn't be facetious. I said I own four of
14 these, but I was being facetious.

15 Q. I should work for you, then. 02:40:18

16 A. I was being facetious. I don't know if
17 four even exist.

18 Q. Could you identify what's depicted in
19 this exhibit?

20 A. The truth is I can only guess. It 02:40:32
21 seems to be probably a baseball card -- I don't
22 know the year -- an early Babe Ruth baseball card.
23 And in the culture at large we tend to know that
24 these cards are very valuable.

25 However, because I'm ignorant, this 02:40:46

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Q. And that this NFT is called
MetaBirkins.

Do you have an opinion whether based on
those facts this NFT is a work of art? 03:51:23

MR. SPRIGMAN: Objection.

A. I can never have an opinion about
whether something is a work of art based on such a
limited set of facts. It does seem to interact
with the other things that -- other Birkins I've 03:51:37
seen which in larger context do seem to be works
of art.

Q. What else would you need to know about
this -- what's depicted in this exhibit in order
to determine whether it's a work of art? 03:51:59

A. Well, among other things what I want to
do -- I guess I could do it right here. It seems
to be one of the other MetaBirkins covered with a
sheet, which would actually indicate to me more
rather than less that it's participating in a 03:52:15
larger artistic project.

It seems to be riffing on other items
from the MetaBirkins repertoire. And the pedestal
with a draped object on top of it very much refers
to statuary in the history of art. The act of 03:52:34

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2 unveiling a statue is something that exists in the
3 history of art. So it seems very much to be part
4 of that discourse.

5 So, yes, the answer is I would say yes, 03:52:47
6 it does seem to be understood in an artistic
7 context.

8 Q. You talked earlier about how the
9 digital files associated with NFTs can change.

10 A. Yes, that's correct, can be changed. I 03:53:16
11 don't think they usually change spontaneously.

12 Q. Do you have any understanding as if at
13 any point since the MetaBirkin NFTs were first
14 offered for sale if the image associated with
15 MetaBirkins NFTs have changed? 03:53:40

16 MR. SPRIGMAN: Objection.

17 A. There would be no way for me to know
18 that. I would have to see the same digital file
19 at two periods of time and then do a forensic
20 analysis of whether a change had been made. 03:54:00
21 That's not part of my expertise.

22 Q. I'm going to represent to you when the
23 MetaBirkin NFTs produced by Mason Rothschild were
24 first offered for sale that the images associated
25 with the NFTs looked like the image in Exhibit 57, 03:54:20

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A. No. MetaBirkins are normally, I would say business art. But just as with any work of art, any work of art can be used for function for subsidiary function, just as a Rembrandt painting could be used to weigh down your laundry. 03:59:40

Q. So if someone were trading MetaBirkins solely for financial speculation, would that be business art?

MR. SPRIGMAN: Objection. 03:59:56

A. Their trading in it is neither -- their trading in it -- if they're not engaged in the art world, the trade itself has nothing to do with art one way or the other. It's not even at stake. Their trading of it has no relevance to its status as business art or not as business art.

That's not how you determine whether something is a work of art, what people do with it. There are lots of people who are buying and selling. There are people who buy art without ever looking at it. In that case its status as art is not at stake. It might be inside a crate and you can't see what it is.

Q. Referring back to Exhibit 57, people who purchase MetaBirkins without seeing what it

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2 is, with respect to this purchase, was art not at
3 stake?

4 MR. SPRIGMAN: Objection, foundation,
5 misstates the record. 04:00:57

6 A. Could you repeat the question, sorry.

7	(Record read.)
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8 MR. SPRIGMAN: And I'll repeat my
9 objection, both to foundation and to a
10 misstatement of the record. 04:01:17

11 A. They know exactly what MetaBirkins is.
12 They have an image of one version, one component,
13 one moment in MetaBirkin projects. They see a
14 sculpture pedestal with a draped something on it
15 which might be purse-like. The fact it says 04:01:37
16 MetaBirkins makes you think I wonder if there's a
17 Birkin underneath that.

18 They have lots of information there to
19 think that there might be something artistic going
20 on. And it's in the world of NFTs, NFT images, 04:01:49
21 which automatically says, Wait a minute, something
22 art-like might be going on here; I should pay
23 attention.

24 Q. I'm going to switch topics here. In

25 Dr. Kominers' report he spoke of utilities 04:02:09